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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

JANET DEAN, individually, as successor to	) Case No
PAUL DEAN, and as Guardian ad litem for	) COMPLAINT FOR VIOLATION OF CIVIL
MARETA DEAN, a minor, and DARYL	) RIGHTS AND DEMAND FOR JURY TRIAL
DEAN, a minor, SARA BECK, individually	) (JURY TRIAL DEMANDED)
and AS GUARDIAN AD LITEM FOR	)
MATTHEW DEAN, a minor,	) 42 U.S.C. §1983 (CIVIL RIGHTS); 42 U.S.C
Plaintiffs,	) §1983 ( <u>MONELL</u> ); ASSAULT AND
v.	) BATTERY; INTENTIONAL INFLICTION
	) OF EMOTIONAL DISTRESS; CIVIL CODE
CITY AND COUNTY OF SAN	) §52.1; WRONGFUL DEATH; NEGLIGENT
FRANCISCO, SAN FRANCISCO POLICE	) SELECTION, TRAINING, RETENTION,
CHIEF HEATHER FONG, SAN	) SUPERVISION, INVESTIGATION AND
FRANCISCO POLICE OFFICER DANNY	) DISCIPLINE; NEGLIGENT INFLICTION
MAY, DOES 1-50.	) OF EMOTIONAL DISTRESS.

Defendants.

1. This is an action for damages for severe personal injuries, emotional distress, and infringement of Fourth Amendment and other Constitutional and common law rights suffered by plaintiffs.

2. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is conferred upon this court by Title 28 of the United States Code, Sections 1331, 1343, and 1367. The unlawful acts and practices alleged occurred in the City and County of San Francisco, which is within this judicial district.

3. Plaintiff, JANET DEAN, is a successor in interest to the ESTATE of the decedent PAUL DEAN. She is also the GUARDIAN AD LITEM of two of decedent's minor children, MARETA DEAN and DARYL DEAN. At all times mentioned herein the Plaintiff was a citizen of the United States and, at the time of the incident, was a resident of San Francisco County. Plaintiff is a person with standing to bring a wrongful death action as a supplemental claim pursuant to California Code of Civil Procedure Sections 377.30 and 377.60.

4. Plaintiff MARETA DEAN, a successor in interest to the ESTATE of decedent, PAUL DEAN, is a minor child of the decedent, and at all times mentioned herein was a citizen of the United States and a resident of San Francisco County. Plaintiff is a person with standing to bring the within action pursuant to California code of Civil Procedure Sections 377.30 and 377.60.

5. Plaintiff MATTHEW DEAN, a successor in interest to the ESTATE of the decedent, PAUL DEAN, is a minor child of the decedent, and at all times mentioned herein was a citizen of the United States and, at the time of the incident, was a resident of the City and County of San

1 Francisco. Plaintiff is a person with standing to bring the within action pursuant to California  
 2 Code of Civil Procedure Sections 377.30 and 377.60. SARA BECK is Matthew Dean's guardian  
 3 ad litem.

4  
 5 6. Plaintiff DARYL DEAN, a successor in interest to the ESTATE of the decedent, PAUL  
 6 DEAN, is a minor child of the decedent, and at all times mentioned herein was a citizen of the  
 7 United States and, at the time of the incident, was a resident of San Francisco County. Plaintiff  
 8 is a person with standing to bring the within action pursuant to California Code of Civil  
 9 Procedure Sections 377.30 and 377.60.  
 10

11 7. Defendant CITY OF SAN FRANCISCO ("CITY") is a municipal corporation, duly  
 12 organized and existing under the laws of the State of California. Defendant POLICE CHIEF  
 13 HEATHER FONG is the chief of police for the Defendant CITY.

14  
 15 8. At all times mentioned here, Defendant MAY was employed as a police officer for the  
 16 defendant CITY. MAY is sued individually and in his capacity as an employee of the CITY. By  
 17 engaging in the conduct described herein, MAY acted under color of law and in the course and  
 18 scope of his employment for Defendant CITY. By engaging in the conduct described herein,  
 19 defendant MAY exceeded the authority vested in him as a police officer under the United States  
 20 Constitution and as an employee of the CITY.  
 21

22 9. Plaintiffs are ignorant of the true names and capacities of defendants DOES 1 through 50  
 23 inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs are informed  
 24 and believe and thereon allege that each defendant so named is responsible in some manner for  
 25 the injuries and damages suffered by plaintiffs as set forth. Plaintiffs will amend their complaint  
 26 to state the true names and capacities of defendants DOES 1 through 10, inclusive, when they  
 27 have been ascertained.  
 28

## STATEMENT OF FACTS

10. On March 30, 2004, Defendant, Officer MAY, stopped the Decedent, PAUL DEAN, for a seat belt violation while DEAN was driving a Toyota 4Runner in San Francisco. MAY was driving a motorcycle at the time he made the stop. On information and belief, MAY stopped DEAN due to his race and MAY's subsequent actions were motivated in part by race.

11. DEAN left the scene without the permission of the officer and while doing so, ran over the defendant's foot.

12. MAY then got onto his motorcycle and pursued DEAN. He notified the central communications center of the San Francisco Police Department that he was in pursuit of DEAN.

13. The central command, whose members supervised the chase, decided to call the chase off and radioed instructions, or attempted to radio instructions, to those in pursuit of DEAN to call off the chase. The radio communication may not have reached the pursuing officers since the CITY has stated that there was a communications failure or communications "glitch."

14. DEFENDANT MAY either purposefully ignored the instruction to call off the chase or did not hear the instruction to call off the chase. In any event, MAY kept up his pursuit of DEAN.

15. DEAN, driving the TOYOTA, rear-ended a parked car near the corner of King and De Haro Streets, as he turned a corner. The accident stopped DEAN's TOYOTA in its tracks.

16. MAY, still in pursuit, pulled his motorcycle a safe distance from the stopped car, off to one side of the TOYOTA, got off his motorcycle, calmly took out his pistol, walked over toward the TOYOTA and, execution-style, fired numerous times into the back of the car toward

1 DEAN's driver seat. DEAN may have been backing up at the time DEAN shot but in any event,  
2 backed up into another parked vehicle, essentially trapping him and the TOYOTA.

3 17. At no time did the officer issue any verbal warnings to DEAN.

4 18. MAY continued to shoot into the TOYOTA as he walked to the passenger side of the car  
5 and fired additional shots directly at DEAN through the window. At no time was MAY in any  
6 danger nor did DEAN have any weapons in the automobile.

7 19. DEAN died from the gunshot wounds.

8  
9 DAMAGES

10 20. As a proximate result of defendants' conduct, decedent DEAN suffered damages  
11 including pain and physical injuries, emotional distress, loss of enjoyment of life, and other  
12 special damages, including, but not limited to burial expenses. DEAN suffered physical pain and  
13 physical injuries after he was shot and prior to dying.

14 21. The minor children plaintiff's have lost their father who supported them financially and  
15 emotionally. They are entitled to all damages available to them under federal and state law.

16 22. The Defendants conduct was mean spirited, malicious, wanton, and oppressive and done  
17 with a conscious, callous and/or reckless disregard for the rights of the Decedent and/or  
18 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages against the defendant.

19 23. Plaintiffs found it necessary to engage the services of private counsel to vindicate their  
20 rights under law. Plaintiffs are therefore entitled to an award of all attorney's fees incurred in  
21 relation to this action for violation of their civil rights.

FIRST CAUSE OF ACTION

(42 U.S.C. §1983)

(PLAINTIFFS AS SUCCESSORS TO THE ESTATE OF DECEDENT PAUL DEAN)

COUNT ONE

24. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 23 of this complaint.

25. In doing the acts complained of, defendants acted under color of law to deprive the decedent and Plaintiffs of certain constitutionally protected rights, including, but not limited to.

- a. The right not to be deprived of life or liberty without due process of law, as guaranteed by the fifth and fourteenth Amendments of the United States Constitution;
- b. The right to be free from the use of excessive force by police officers, which is guaranteed by the fourth, fifth and fourteenth Amendments to the United States Constitution;
- c. the right to be free from unreasonable searches and seizures under the 4th amendment to the United States Constitution;
- d. the right to continued familial relationship, association, comfort, society and affection of his children under the 14th Amendment to the United States Constitution;
- e. the right to be free from discrimination based on race under the 14th Amendment to the United States Constitution

26. As a proximate result of the violation of the Decedent's constitutional rights as alleged herein, Decedent and Plaintiffs suffered injuries, damages, including but not limited to, pain, suffering, emotional distress; loss of the enjoyment of life, special damages, including, but not limited to, future income and wage loss, funeral and burial expenses, interference with his right

1 of society, comfort and affection with the Plaintiffs and other general and special damages to be  
2 determined according to proof.

3 27. The acts and/or omissions of Defendants MAY and/or DOES 1-50 and/or each of them,  
4 were intentional, malicious, oppressive, and/or done with a conscious, callous and/or reckless  
5 disregard for the rights of the Decedent and/or Plaintiffs. Therefore, Plaintiffs pray for an award  
6 of punitive damages in amounts to be determined according to proof.  
7

8 28. Plaintiffs are also entitled to recover their attorneys' fees and costs pursuant to 42 U.S.C.  
9 Sections 1983, 1988 and/or other applicable laws.  
10

11 WHEREFORE, plaintiffs pray for relief as set forth herein.

12 COUNT TWO

13 PLAINTIFFS JANET DEAN, MARETA DEAN, MATTHEW DEAN, AND DARYL DEAN

14 29. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 28 of this  
15 complaint.  
16

17 30. In doing the acts complained of herein, Defendants MAY and/or DOES 1-50 and/or each  
18 of them, individually and/or while acting in concert with one another, did act under color of state  
19 law to deprive the Plaintiffs, as alleged heretofore, of certain constitutionally protected rights,  
20 including, but not limited to, the right to continued familial association, society, comfort,  
21 affection, support, and companionship of the Decedent as guaranteed by the First and/or  
22 Fourteenth Amendments to the United States Constitution.  
23

24 31. As a result of the violation of the Plaintiffs' constitutional rights as alleged herein,  
25 Plaintiffs suffered and will continue to suffer in the future, injuries and damages, including, but  
26 not limited to, loss of comfort, affection, society, support companionship and familial association  
27  
28

1 of the Decedent, pain, suffering and emotional distress, funeral and burial expenses, loss of  
 2 income and/or support, in amounts to be determined according to proof.

3 32. The acts and/or omissions of Defendants MAY and/or DOES 1-50 and/or each of them,  
 4 were intentional, malicious, oppressive, and/or done with a conscious, callous and/or reckless  
 5 disregard for the rights of the Decedent and/or Plaintiffs. Therefore, Plaintiffs pray for an award  
 6 of punitive damages in amounts to be determined according to proof.  
 7

8 33. Plaintiffs are also entitled to recover their attorney's fees and costs pursuant to 42 U.S.C.  
 9 Sections, 1983, 1988 and/or other applicable law.  
 10

11 Wherefore, Plaintiffs pray for relief as hereinafter set forth.

12 SECOND CAUSE OF ACTION

13 (42 U.S.C. § 1983 - Monell)

14 (Against defendants CITY AND COUNTY OF SAN FRANCISCO AND HEATHER FONG)

15 34. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 33 of this  
 16 complaint. The CITY, by and through their supervisory employees and officials, including  
 17 CHIEF FONG, has been given notice on repeated occasions of a pattern of ongoing  
 18 constitutional violations and practices by the defendant police officers. Despite such notice,  
 19 Defendant CITY and FONG demonstrated deliberate indifference to this pattern and these  
 20 practices of constitutional violations by failing to take necessary, appropriate, or adequate  
 21 measures to prevent the continued perpetuation of said pattern of conduct by the defendant  
 22 officers. This lack of an adequate supervisory response by Defendants CITY and FONG  
 23 demonstrates the existence of an informal custom or policy which tolerates and promotes the use  
 24 of excessive force and violations of civil rights of residents of and visitors to the City of San  
 25 Francisco.  
 26  
 27  
 28



1 36. The acts of the defendant MAY alleged herein are the direct and proximate result of the  
2 deliberate indifference of Defendant CITY and FONG, and their supervisory officials and  
3 employees to violations of constitutional rights of citizens by the defendant officer. The  
4 plaintiffs' injuries were foreseeable and a proximate result of the deliberate indifference of the  
5 CITY and FONG to the pattern, practices, customs, and policies described above.  
6

7 37. The CITY and FONG have also been put on notice that its officers in hot pursuit do not  
8 follow and, in fact, ignore departmental rules and regulations regarding hot pursuits and  
9 particularly rules relating to communications about pursuit. At all times mentioned herein, it  
10 was the policy and/or custom of CITY and FONG to allow its police officers to improperly  
11 pursue citizens while in hot pursuit, thereby failing to adequately discourage constitutional  
12 violations on the part of its police officers. Despite such notice, Defendant CITY and FONG  
13 demonstrated deliberate indifference to this pattern and these practices of constitutional  
14 violations by failing to take necessary, appropriate, or adequate measures to prevent the  
15 continued perpetuation of said pattern of conduct by the defendant officers. This lack of an  
16 adequate supervisory response by Defendant CITY and FONG demonstrates the existence of an  
17 informal custom or policy which tolerates and promotes the use of excessive force and violations  
18 of civil rights of residents of and visitors to the City of San Francisco.  
19  
20  
21

22 WHEREFORE, Plaintiffs pray for relief as set forth herein.

23 THIRD CAUSE OF ACTION  
24 (Assault and Battery)

25 38. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 37 of this  
26 complaint.

27 39. Defendant MAY placed the decedent in immediate fear of death and severe bodily harm  
28 by shooting him without just provocation or cause. Defendant committed assault and battery

1 against the decedent by drawing his weapon, approaching the decedent, then shooting him even  
2 though the decedent did not have a weapon in his possession.

3 40. Defendant's conduct was neither privileged nor justified under statute or common law.

4 WHEREFORE, Plaintiffs pray for relief as set forth herein.

5  
6 FOURTH CAUSE OF ACTION  
7 (Intentional Infliction of Emotional Distress)

8 41. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 40 of this  
9 complaint. The conduct of defendant MAY, as set forth herein, was extreme and outrageous and  
10 beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized  
11 society. Defendant MAY, angry about DEAN'S having run over his foot, planned to kill DEAN  
12 once he caught up to him. He shot the decedent multiple times, putting him in fear for his life  
13 when his worst crime was stealing a car and fleeing arrest. MAY deliberately injured the  
14 decedent and did the aforementioned extreme and outrageous acts with the intent to inflict severe  
15 mental and emotional distress upon all the plaintiffs.

16  
17 42. As a proximate result of defendants' willful, intentional and malicious conduct, the  
18 plaintiffs suffered severe extreme mental and emotional distress. Therefore, the plaintiffs are  
19 entitled to an award of punitive damages as against MAY. Plaintiffs have suffered damages as  
20 set forth.

21  
22 WHEREFORE, Plaintiffs prays for relief as set forth herein

23  
24 FIFTH CAUSE OF ACTION  
25 (California Civil Code §52.1)

26 43. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 42 of this  
27 complaint.  
28

44. The conduct and actions of defendant MAY as described herein violated California Civil Code §52.1, in that MAY's actions interfered with the decedent's exercise and enjoyment of his civil rights, as enumerated above, through use of wrongful force, including his right to be free from violence and the threat of violence.

45. As a direct and proximate result of defendant's violations of Civil Code §52.1, the decedent suffered violations of his constitutional rights, and suffered damages as set forth.

46. Since MAY'S wrongful conduct occurred in the course and scope of his employment, defendant CITY is therefore liable to the ESTATE pursuant to respondeat superior.

47. The decedent's estate is entitled to injunctive relief and an award of reasonable attorney's fees pursuant to Civil Code §52.1(h).

WHEREFORE, plaintiff prays for relief as set forth herein.

#### SIXTH CAUSE OF ACTION

(Wrongful Death/Negligence or Intentional)

48. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 47 of this complaint.

49. At all times herein mentioned, defendant MAY was subject to a duty of care to avoid causing unnecessary physical harm and distress to citizens in the exercise of his employment. The conduct of defendant MAY, as set forth herein, did not comply with the standard of care to be exercised by reasonable police, proximately causing plaintiff to suffer damages as set forth herein. Defendants acts as alleged herein were negligent or alternatively, were done maliciously and intentionally . Defendant MAY shot the decedent without good cause and without provocation. Defendant CITY failed to properly train its police officer employees and failed to properly operate its communications systems.

1 50. As a proximate result of the defendants acts as alleged herein, decedent died on March  
2 30, 2004.

3 51. Prior to the death of decedent, plaintiffs depended upon him on him for their support and  
4 maintenance.

5 52. As a proximate result of the defendants acts, and each of them, and of the death of  
6 decedent, plaintiffs have sustained pecuniary loss resulting from the loss of the society, comfort,  
7 attention, services, and support of decedent.  
8

9 53. As a further proximate result of the defendants' acts, and each of them, and of the death  
10 of decedent, JANET DEAN, MATTHEW DEAN, DARYL DEAN and MARETA DEAN have  
11 incurred funeral and burial expenses.  
12

13 WHEREFORE, Plaintiffs pray for relief as set forth.

14 SEVENTH CAUSE OF ACTION

15 (Negligent Selection, Training, Retention,  
16 Supervision, Investigation and Discipline)

17 (Against defendants CITY OF SAN FRANCISCO, CHIEF FONG and  
and DOES 1 through 50)

18 54. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 53 of this  
19 complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,  
20 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive  
21 damages.  
22

23 55. Defendants CITY and FONG had a mandatory duty of care to properly and adequately  
24 select, train, retain, supervise, investigate, and discipline defendant police herein so as to avoid  
25 unreasonable risk of harm to citizens, including training officers on the CITY's policy for high  
26 speed chases, training in how to pursue or not pursue a fleeing suspect, and training in the use of  
27  
28

1 deadly force. The CITY is under a mandatory duty to adopt a vehicular pursuit policy pursuant  
2 to California Vehicle Code section 13519.8.

3 56. Defendants CITY and FONG by and through their supervisory officials and employees  
4 have been given notice on repeated occasions of a pattern of ongoing negligence by its  
5 employees as to the matters described above.  
6

7 57. Despite this notice, Defendants CITY and FONG have demonstrated deliberate  
8 indifference to this pattern and practice of negligence by failing to take necessary, appropriate or  
9 adequate measures to prevent the continued perpetuation of this pattern of conduct by its police  
10 officer employees.  
11

12 58. Defendants CITY and FONG breached their duty of care to citizens in its failure to  
13 adequately train the defendant MAY in the proper means of vehicular pursuit and the use of  
14 force in the course of his employment as a police officer. This lack of an adequate supervisory  
15 response by Defendants CITY and FONG and the lack of adequate training promotes the  
16 continuing use of excessive force and improper vehicular pursuits.  
17

18 59. As a proximate result of Defendant CITY and WONG's wrongful conduct, plaintiffs  
19 suffered damages as set forth herein.  
20

21 WHEREFORE, Plaintiffs pray for relief as set forth herein.

22 NINTH CAUSE OF ACTION  
23 (Negligent Infliction of Emotional Distress)

24 60. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 59 of this  
25 complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,  
26 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive  
27 damages.  
28

61. At all times herein mentioned, defendant MAY was subject to a duty of care to avoid causing unnecessary physical harm and distress to citizens in the exercise of the police function. The conduct of MAY, as set forth herein, did not comply with the standard of care to be exercised by a reasonable police officer, proximately causing the decedent to suffer damages as set forth herein.

62. The conduct of defendant MAY as set forth herein, was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society.

63. As a proximate result of defendant MAY's willful, intentional and malicious conduct, the decedent suffered severe and extreme mental and emotional distress. The decedent suffered damages as set forth.

WHEREFORE, Plaintiff prays for relief as set forth below.

#### CLAIM REQUIREMENT

64. For state causes of action, plaintiffs are required to comply with an administrative claim requirement under California law. All plaintiffs have complied with all applicable requirements.

#### JURY DEMAND

Plaintiffs hereby demand a jury trial in this action.

#### PRAYER

WHEREFORE, Plaintiffs pray for relief as follows:

1. General damages according to proof;
2. Special damages according to proof;
3. Punitive damages against the individually named police officers according to proof;

1 4. For funeral and burial expenses for the decedent according to proof;

2 5. For interest on all economic damages in the legal amount from March 30, 2004,  
3 to the date of judgment;

4 6. Exemplary damages in the amount of \$25,000 for each violation pursuant to  
5 California Civil Code §52.1(b) and reasonable attorneys fees pursuant to California Civil Code  
6 §52.1(h).  
7

8 7. Reasonable attorneys fees pursuant to 42 U.S.C. §1988;

9 8. Costs of suit incurred herein; and,  
10

11 9. Such other and further relief as the Court may deem just and proper.  
12

13 THE LAW OFFICES OF RANDOLPH DAAR  
14 THE LAW OFFICES OF MATTHEW KUMIN, P.C.

15 Dated: \_\_\_\_\_

16 By: \_\_\_\_\_

17 MATTHEW KUMIN  
18 Attorney for Plaintiffs  
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